

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CERTAIN UNDERWRITERS AT LLOYD'S,
LONDON, that participate on marine cargo
policy no. B0799MC030730k, foreign
corporations,

Plaintiffs,

v.

MILLS BROS. INTERNATIONAL, INC. dba
GLOBAL HARVEST FOODS, LTD., a
Washington Corporation,

Defendant.

CASE NO. C18-1661-JCC

ORDER

This matter comes before the Court on the parties' stipulated protective order (Dkt. No. 41). Having thoroughly considered the parties' stipulated protective order, the Court hereby ETNERS the following:

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter the following stipulated protective order. The parties acknowledge that this agreement is consistent with Western District of Washington Local Civil Rule 26(c). It does not confer blanket protection on all disclosures or responses to

discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle the parties to file confidential information under seal.

2. “CONFIDENTIAL” MATERIAL

“Confidential” material shall include the following documents and tangible things produced or otherwise exchanged: (1) Underwriters’ confidential Claims Manual; (2) the agreements between Underwriters and EIMC and Underwriters and Lonmar, including but not limited to the Terms of Business Agreement (Risk Transfer) between Newline Underwriting Management Ltd. and SBJ Limited, and the Terms of Engagement with Adjuster, First Party—which have previously been produced; (3) Defendant’s tax and financial records; and (4) Defendant’s pressed seed products’ processes, including equipment, mixtures, and formulas.

3. SCOPE

The protections conferred by this agreement cover not only confidential material (as defined above), but also: (1) any information copied or extracted from confidential material; (2) all copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony, conversations, or presentations by parties or their counsel that might reveal confidential material.

However, the protections conferred by this agreement do not cover information that is in the public domain or becomes part of the public domain through trial or otherwise.

4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

4.1 Basic Principles. A receiving party may use confidential material that is disclosed or produced by another party or by a non-party in connection with this case only for prosecuting, defending, or attempting to settle this litigation. Confidential material may be disclosed only to the categories of persons and under the conditions described in this agreement. Confidential material must be stored and maintained by a receiving party at a location and in a secure manner that ensures that access is limited to the persons authorized under this agreement.

1 4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
2 ordered by the Court or permitted in writing by the designating party, a receiving party may
3 disclose any confidential material only to:

4 (a) the receiving party’s counsel of record in this action, as well as employees of
5 counsel to whom it is reasonably necessary to disclose the information for this litigation;

6 (b) the officers, directors, and employees (including in-house counsel) of the
7 receiving party to whom disclosure is reasonably necessary for this litigation, unless the parties
8 agree that a particular document or material produced is for Attorney’s Eyes Only and it is so
9 designated;

10 (c) experts and consultants to whom disclosure is reasonably necessary for this
11 litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

12 (d) the Court, court personnel, and court reporters and their staff;

13 (e) copy or imaging services retained by counsel to assist in the duplication of
14 confidential material, provided that counsel for the party retaining the copy or imaging service
15 instructs the service not to disclose any confidential material to third parties and to immediately
16 return all originals and copies of any confidential material;

17 (f) during their depositions, witnesses in the action to whom disclosure is reasonably
18 necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit
19 A), unless otherwise agreed by the designating party or ordered by the Court. Pages of
20 transcribed deposition testimony or exhibits to depositions that reveal confidential material must
21 be separately bound by the court reporter and may not be disclosed to anyone except as permitted
22 under this agreement; and

23 (g) the author or recipient of a document containing the information or a custodian or
24 other person who otherwise possessed or knew the information.

25 4.3 Filing Confidential Material. Before filing confidential material or discussing or
26 referencing such material in court filings, the filing party shall confer with the designating party,

1 in accordance with Western District of Washington Local Civil Rule 5(g)(3)(A), to determine
2 whether the designating party will remove the confidential designation, whether the document
3 can be redacted, or whether a motion to seal or stipulation and proposed order is warranted.
4 During the meet-and confer process, the designating party must identify the basis for sealing the
5 specific confidential information at issue, and the filing party shall include this basis in its
6 motion to seal, along with any objection to sealing the information at issue. Western District of
7 Washington Local Civil Rule 5(g) sets forth the procedures that must be followed and the
8 standards that will be applied when a party seeks permission from the Court to file material
9 under seal. A party who seeks to maintain the confidentiality of its information must satisfy the
10 requirements of Western District of Washington Local Civil Rule 5(g)(3)(B), even if it is not the
11 party filing the motion to seal. Failure to satisfy this requirement will result in the motion to seal
12 being denied, in accordance with the strong presumption of public access to the Court's files.

13 **5. DESIGNATING PROTECTED MATERIAL**

14 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party
15 or non-party that designates information or items for protection under this agreement must take
16 care to limit any such designation to specific material that qualifies under the appropriate
17 standards. The designating party must designate for protection only those parts of material,
18 documents, items, or oral or written communications that qualify, so that other portions of the
19 material, documents, items, or communications for which protection is not warranted are not
20 swept unjustifiably within the ambit of this agreement.

21 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
22 shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to
23 unnecessarily encumber or delay the case development process or to impose unnecessary
24 expenses and burdens on other parties) expose the designating party to sanctions.

25 If it comes to a designating party's attention that information or items that it designated
26 for protection do not qualify for protection, the designating party must promptly notify all other

1 parties that it is withdrawing the mistaken designation.

2 5.2 Manner and Timing of Designations. Except as otherwise provided in this
3 agreement (*see, e.g.*, second paragraph of section 5.2(a) below), or as otherwise stipulated or
4 ordered, disclosure or discovery material that qualifies for protection under this agreement must
5 be clearly so designated before or when the material is disclosed or produced.

6 (a) Information in documentary form: (*e.g.*, paper or electronic documents and
7 deposition exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings),
8 the designating party must affix the word “CONFIDENTIAL” to each page that contains
9 confidential material. If only a portion or portions of the material on a page qualifies for
10 protection, the producing party also must clearly identify the protected portion(s) (*e.g.*, by
11 making appropriate markings in the margins).

12 (b) Testimony given in deposition or in other pretrial proceedings: the parties and any
13 participating non-parties must identify on the record, during the deposition or other pretrial
14 proceeding, all protected testimony, without prejudice to their right to so designate other
15 testimony after reviewing the transcript. Any party or non-party may, within 15 days after
16 receiving the transcript of the deposition or other pretrial proceeding, designate portions of the
17 transcript, or exhibits thereto, as confidential. If a party or non-party desires to protect
18 confidential information at trial, the issue should be addressed during the pre-trial conference.

19 (c) Other tangible items: the producing party must affix in a prominent place on the
20 exterior of the container or containers in which the information or item is stored the word
21 “CONFIDENTIAL.” If only a portion or portions of the information or item warrant protection,
22 the producing party, to the extent practicable, shall identify the protected portion(s).

23 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
24 designate qualified information or items does not, standing alone, waive the designating party’s
25 right to secure protection under this agreement for such material. Upon timely correction of a
26 designation, the receiving party must make reasonable efforts to ensure that the material is

1 treated in accordance with the provisions of this agreement.

2 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

3 6.1 Timing of Challenges. Any party or non-party may challenge a designation of
4 confidentiality at any time, including for those materials listed in paragraph 2. Unless a prompt
5 challenge to a designating party's confidentiality designation is necessary to avoid foreseeable,
6 substantial unfairness, unnecessary economic burdens, or a significant disruption or delay of the
7 litigation, a party does not waive its right to challenge a confidentiality designation by electing
8 not to mount a challenge promptly after the original designation is disclosed.

9 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute
10 regarding confidential designations without court involvement. Any motion regarding
11 confidential designations or for a protective order must include a certification, in the motion or in
12 a declaration or affidavit, that the movant has engaged in a good faith meet-and-confer
13 conference with other affected parties in an effort to resolve the dispute without court action. The
14 certification must list the date, manner, and participants to the conference. A good faith effort to
15 confer requires a face-to-face meeting or a telephone conference.

16 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court
17 intervention, the designating party may file and serve a motion to retain confidentiality under
18 Western District of Washington Local Civil Rule 7 (and in compliance with Western District of
19 Washington Local Civil Rule 5(g), if applicable). The burden of persuasion in any such motion
20 shall be on the designating party. Frivolous challenges, and those made for an improper purpose
21 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may expose the
22 challenging party to sanctions. All parties shall continue to maintain the material in question as
23 confidential until the Court rules on the challenge.

24 **7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN** 25 **OTHER LITIGATION**

26 If a party is served with a subpoena or a court order issued in other litigation that compels

disclosure of any information or items designated in this action as “CONFIDENTIAL,” that party must:

(a) promptly notify the designating party in writing and include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this agreement. Such notification shall include a copy of this agreement; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the designating party whose confidential material may be affected.

8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential material to any person or in any circumstance not authorized under this agreement, the receiving party must immediately (a) notify in writing the designating party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the protected material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this agreement, and (d) request that such person or persons execute the “Acknowledgment and Agreement to Be Bound” (Exhibit A).

9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a producing party gives notice to receiving parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order or agreement that provides for production without prior privilege review. The parties agree to the entry of a non-waiver order under Federal Rule of Evidence 502(d) as set forth herein.

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1 **10. NON-TERMINATION AND RETURN OF DOCUMENTS**

2 Within 60 days after the termination of this action, including all appeals, each receiving
3 party must return all confidential material to the producing party, including all copies, extracts
4 and summaries thereof. Alternatively, the parties may agree upon appropriate methods of
5 destruction.

6 Notwithstanding this provision, counsel are entitled to retain one archival copy of all
7 documents filed with the Court, trial, deposition, and hearing transcripts, correspondence,
8 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert
9 work product, even if such materials contain confidential material.

10 The confidentiality obligations imposed by this agreement shall remain in effect until a
11 designating party agrees otherwise in writing or a court orders otherwise.

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1 **IT IS SO STIPULATED, THROUGH COUNSEL OF**
2 **RECORD.**

3 DATED: Sep 3, 19, 8:48 AM

4 BULLIVANT HOUSER BAILEY PC

5
6 By /s/ Matthew J. Sekits
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11 *Attorneys for CERTAIN UNDERWRITERS*
12 *AT LLOYD'S, LONDON, that participate on*
13 *marine cargo policy B0799MC030730k*

14 VAN KAMPEN & CROWE PLLC

15 By /s/ Al Van Kampen (per email auth. 8/21/19)
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18 *Attorneys for MILLS BROS.*
19 *INTERNATIONAL, INC. and GLOBAL*
20 *HARVEST FOODS, LTD.*

1 PURSUANT TO STIPULATION, IT IS SO ORDERED.

2 IT IS FURTHER ORDERED that, pursuant to Federal Rule of Evidence 502(d), the
3 production of any documents in this proceeding shall not, for the purposes of this proceeding or
4 any other proceeding in any other court, constitute a waiver by the producing party of any
5 privilege applicable to those documents, including the attorney-client privilege, attorney work-
6 product protection, or any other privilege or protection recognized by law.

7 DATED this 3rd day of September 2019.

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11 John C. Coughenour
12 UNITED STATES DISTRICT JUDGE
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1 **EXHIBIT A**

2 **ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

3 I, _____ [print or type full name], of
4 _____ [print or type full address], declare under penalty of
5 perjury that I have read in its entirety and understand the Stipulated Protective Order that was
6 issued by the United States District Court for the Western District of Washington on _____ in the
7 case of *Certain Underwriters at Lloyd's London v. Mills Bros International, Inc., et al.*, Case No.
8 C18-1661-JCC (W.D. Wash. 2018). I agree to comply with and to be bound by all the terms of
9 this Stipulated Protective Order and I understand and acknowledge that failure to so comply
10 could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that
11 I will not disclose in any manner any information or item that is subject to this Stipulated
12 Protective Order to any person or entity except in strict compliance with the provisions of this
13 Order.

14 I further agree to submit to the jurisdiction of the United States District Court for the
15 Western District of Washington for the purpose of enforcing the terms of this Stipulated
16 Protective Order, even if such enforcement proceedings occur after termination of this action.

17 Date: _____

18 City and State where sworn and signed: _____

19 Printed name: _____

20 Signature: _____